IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

MFA.No. 1297 of 2000()

OPMV.60/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
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APPELLANTS:PETITIONERS IN OP(MV) NO.60/1998

DEVIKA, W/O HARI, RESIDING AT DEVIKA NILAYAM, SHORNUR IN OTTAPALAM TALUK, PALAKKAD DISTRICT

BY ADV. SRI.P.G.PARAMESWARA PANICKER
SRI.SANTHEEP ANKARATH

RESPONDENTS: RESPONDETNS IN OP(MV) NO.60/1998
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1. **JOSE, S/O.INASU, RESIDING AT RADHA KRISHNA NIVAS (THALAKKOTTUR VEEDU), CHUDUVALATHUR, SHORANUR IN OTTAPALM TALUK (DRIVER OF AUTORICKSHAW NO.KL-9/7922. DL NO.837/84 - VALID UPTO 1.5.2000: BADGE NO.746/89)**

2. **MANIKANDAN, RESIDING AT MULAKKAL HOUSE, GANESHGIRI, SHORNUR IN OTTAPALAM TALUK (OWNER OF AUTORICKSHAW NO.KL-9/7922)**

3. **UNITED INDIA INSURANCE COMPANY LTD., KUNHNAMKULAM (INSURER OF AUTORICKSHAW NO.KL-9/7922 - POLICY NO.101202/31/068/11/39258/97)**

4. **P.K.SANTHOSH, S/O.KUMARAN, THARALI VEEDU, POONKUNNAM, THRISSUR (DRIVER OF BUS NO. KL-8E/6669-D.L.NO.6080/82 - VALID UPTO 17/12/1997 BADGE NO.541/86)**

5. **AMBALAKKATT VIJAYAKUMARAN NAIR, S/O.BALAN NAIR, KARTHIKA, KUTTOOR, THRISSUR (OWNER OF BUS NO.KL-8 E/6669).**

6. ORIENTAL INSURANCE CO. LTD., THRISSUR
(INSURER OF BUS NO.KL8E/6669 - POLICY NO.1997/3204)

BY ADV. SRI.P.V.JYOTHI PRASAD FOR R6
SRI.P.MURALEEDHARAN FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/01/2007,THE COURT ON 7/2/2007 DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 1297 of 2000

Dated this the 7th day of February, 2007

Judgment

Koshy, J.

The appellant, along with her husband, was travelling in the autorickshaw, driven by the first respondent, from Shoranur to Kulappully, on 17.5.1997. When the vehicle reached the place of accident, the bus, driven by the fourth respondent, came from the opposite side and dashed against the autorickshaw. As a result of the accident, she suffered very serious injuries. Initially, she was treated in Sanjeevani Hospital, Shoranur, which issued Ext.A4 wound certificate. Thereafter, she was referred to the Elite Mission Hospital, Thrissur. Ext.A7, the operation card, issued from Elite Mission Hospital, reveals the gravity of injury sustained by the petitioner. She had spleen and fracture left zygoma. Emergency splenectomy was also done on 19.5.1997 with mid line incision. Blood transfusion was also done. PW2, doctor, by referring to the clinical records, stated that the petitioner is suffering from 50% disability consequent to the

splenectomy. Ext.A6 is the disability certificate. PW2 stated further that immunity power of the petitioner is lost by removal of spleen and that she has to be administered antibiotics constantly for even preventing a minor disease. He further stated that she had haemoperitoneum and that there was fracture zygoma (L) side. There is a kaloid formation on her abdomen from the upper chest, extending to the lower abdomen, created by surgical incision. The tribunal, though accepted the disability certificate, assessing 50% permanent disability the compensation calculated was only Rs.1,50,273/- against a claim of Rs.3,00,000/-. Tribunal found that the accident occurred due to 70% negligence on the part of autorickshaw driver and 30% negligence on the part of the bus driver. On the date of accident, there was no coverage of insurance for the autorickshaw. Therefore, tribunal directed the driver and owner of the autorickshaw (R1 and R2) to deposit 70% of the compensation and 30% to be deposited by the sixth respondent, insurance company, which insured the bus, owned by fifth respondent and driven by the fourth respondent.

2. Three contentions are raised by the appellant: (1) Quantum of compensation awarded by the

tribunal is very low; (2) fixing 70% negligence on the part of the autorickshaw driver is incorrect. Entire accident arose due to the negligence of the driver of the bus; and (3) Even if the accident occurred due to the composite negligence of the drivers of the autorickshaw and the bus, since bus driver is a joint tortfeasor, entire compensation ought to have been directed to be deposited by the insurance company.

3. First, we will consider the question of compensation awarded by the tribunal. Tribunal awarded compensation as follows:

1.	Medical expenses	: Rs.23,073/-	(Actual bills produced)
2.	Hospital expenses	: Rs. 1,200/-	(12 days inpatient and operation)
3.	Transportation expenses to hospital and damage to clothing	: Rs. 4,000/-	
4.	Actual loss of monthly income	: Rs. 4,000/-	(Rs.1000/- each for four months)
5.	Pain and suffering	: Rs.13,000/-	
6.	Head injury compensation	: Rs.15,000/-	
7.	Disability compensation	: Rs.80,000/-	
9.	Loss of enjoyment and amenities in life and disfigurement due to permanent scar in abdomen	: Rs. 5,000/-	
10.	Shortened expectation of life due to shock and treatment	: Rs. 5,000/-	
	Total	:Rs.1,50,273/-	

Tribunal has calculated monthly income of the appellant at Rs.1,000/= as she was only a housewife. Services done by a housewife to the family is actually very high. Accident occurred on 17.5.1997. In 1994, when the second schedule was framed, notional income of a non-earning person was fixed as Rs.15,000/- per year. (Rs.1,250/- per month.) We are of the opinion that at least that amount ought to have been fixed as notional income. Therefore, actual loss of salary for four months will be Rs.5,000/-. Hence, the claimant is entitled to an additional amount of Rs.1,000/- under the above head.

4. Appellant was aged 34 years at the time of accident. Considering the multiplier fixed under the second schedule, we fix 16 as the apt multiplier, to be adopted in this case, to fix disability compensation. Hence, compensation payable for disability of 50%, as certified by the doctor, and assessed by the tribunal, will be Rs.15,000 x 16 x 50/100 = 1,20,000/-. Tribunal has assessed disability compensation at Rs.80,000/- and head injury compensation at Rs.15,000/-. Deducting the above, additional compensation payable will be Rs.25,000/- (1,20,000 - 95,000). Tribunal has allowed reimbursement of medical expenses only on the basis of

actual medical bills for Rs.23,073/- and hospital expenses of Rs.1,200/-. Many expenses in the hospital and charge for attendant etc. might have been incurred which are not supported by any bills. Considering the operation and follow up treatment expenses and attendant charges, an amount of Rs.4,000/- ought to have been allowed. Thus, the claimant will be entitled to Rs.30,000/- and total amount payable will be Rs.1,80,273/-. We round it to Rs.1,80,270/-.

5. With regard to apportionment of 30% negligence on bus driver and 70% on the autorickshaw driver, it was fixed solely on the basis of scene mahazar. Oral evidence was adduced only by the appellant (PW1). According to her, accident occurred due to the negligence of the bus driver alone. Even though there is no evidence to the contrary, she is an interested witness. Accident was due to a head-on collision. Both bus driver and autorickshaw driver were charge-sheeted for offences punishable under section 273, 337 and 338 of the Indian Penal Code. Scene mahazar was prepared after the incident. Autorickshaw, being a small vehicle, will be thrown away due to accident and position of the vehicles seen in scene mahazar may not be the exact place

of accident. No eye witnesses, other than PW1, was examined in this case. In the above circumstances, Tribunal ought to have fixed 50% liability on each drivers instead of fixing 70% liability on the autorickshaw driver and 30% on the bus driver.

6. The next question is the liability to pay compensation. Admittedly, the autorickshaw driver was not having a valid licence on the date of the accident. Hence, the insurance company of the autorickshaw (third respondent) has no liability to pay compensation. Even though it was contended that being a joint tortfeasor, the entire compensation should be deposited by the third respondent, insurance company, we are of the opinion that there is no rhyme or reason for compelling sixth respondent to indemnify the liability of the bus driver to pay compensation for the negligence of autorickshaw driver. Sixth respondent has no liability to indemnify the loss caused due to the negligence of the driver of the autorickshaw. Even though it is a case where bus driver and autorickshaw driver are responsible equally for the accident, they were not joint tortfeasors, as autorickshaw driver and bus driver did not jointly do the wrong thing. The acts were independent and separate. In

this connection, we refer to the decision of this Court in Sasidharan v. Sukumaran (2005 (1) KLT 1063). In any event, in this case compensation was claimed from both sides. Tribunal awarded compensation, to be realised from both sides, depending upon the percentage of negligence found on the bus driver and autorickshaw driver and awarded compensation. We see nothing wrong in the procedure adopted by the tribunal in apportioning the liability also so as to be inferred in the appeal proceedings.

7. Since we have increased the compensation and interfered with the apportionment of negligence, compensation payable by first and second respondents is Rs.90,135/- each (50% of Rs.1,80,270/-) with interest and cost as awarded by the tribunal. Third respondent insurance company has to deposit Rs.90,135/- with interest and cost as awarded by the tribunal after deducting the amount already paid. Balance amount of Rs.90,135/- with interest and cost can be realised from respondent Nos.5 and 6. Since accident arose about a decade back, on deposit of the amount, appellant is

allowed to withdraw the same after deducting the court fee payable.

Appeal is allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.No.1297/2000

Judgment

Dated: 7th February, 2007